IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.38 OF 2005

Shri Kisan Yeshwant Malode & ors. Petitioners

Vs.

The Special Land Acquisiting Officer,
Minor Irrigation, Nashik & ors. Respondents

Mr.P.N.Joshi for petitioners.
Mrs.G.P.Mulekar, AGP for respondents.

CORAM: B.H.MARLAPALLE,J.
July 04, 2005.

ORAL ORDER:

1. Heard Mr.Joshi, the learned counsel for the petitioners who had approached the Collector and submitted an application under Section 18 of the Land Acquisition Act, 1894 for enhancement of compensation and the said application came to be returned by the Collector vide impugned order dated 14-12-2004 on the ground that it was not filed within a period of six weeks from the date of receipt of notice under section 12(2) of the said Act.

2. The Special Land Acquisition Officer In-charge for the Minor Irrigation Department, Nashik District has filed an affidavit-in-reply and set out the

chronology of events in respect of suit land as under:

(a) 18-7-1989 Notification under Section 4 of the Act published in the Government Gazette.

(b) 14-6-1990 Declaration under Section of the Act published in the Government Gazette.

(c) 6-7-1992 Award under Section 11 came to be passed.

(d) 9-7-1992 Notice under Section 12(2) of the act came to be issued.

(e) 21-7-1992 Shri Gorakshnath Malode was appointed as General Power of Attorney by the claimants, empowering him to receive the compensation towards acquired land.

(f) 10-8-1992 Compensation was paid to the claimants.

(g) 16-12-1992 Applications under section 18 of the Act verified by the Power of attorney came to be submitted.

3. There is no dispute that the limitation of six weeks would operate from the date the claimants had received the notice under section 12(2) of the Act. The affidavit submitted by the Land Acquisition Officer states that such notice was issued on

9-7-1992 but the claimants claim that they received notice for the first time on 28-9-1992 as has been set out in para 14 of the application submitted to the Collector under Section 18 of the Act. Even if this date is accepted to be correct for service of notice, the application submitted on 16-12-1992 would be beyond limitations. By the claimants own contentions they appointed the General Power of Attorney on 21-7-1992 and a copy of the said document has been placed on record and the contents therein do show that they had received the notice under section 12(2) before the General Power of Attorney was executed. Even otherwise the claimants received the compensation on 10-8-1992 and this is one more date on the basis of which it will have to be presumed that the claimants had received the notice. However, as admitted by the claimants themselves that the notice was received on 28-9-1992, the application submitted on 16-12-1992 was beyond limitations and, therefore, the reliance placed by the learned counsel on the decision of this Court (D.B.) in the case of Ramesh Chandra Bhogilal Parikh v. Collector of Dadra and Nagar Haveli reported in **1997 (II) Land Acquisition Laws 419** and the decision of the Supreme Court in the case of Orissa Industrial Infrastructure

Development Corpn. v. Supai Munda & ors. reported in **(2004) 12 SCC 306**, in this case, is misplaced. The Full Bench of this Court on a reference made in Civil Revision Application No.599 of 1992 has held that Section 18(3) of the Act notwithstanding, the Collector under Section 18(1) of the said Act performs a statutory function and does not act as a Court. Section 29(2) of the Act cannot be applied to the proviso to Section 18 (2) and, therefore, section 5 of the Limitation Act cannot be applied for extension of period of limitation prescribed under proviso to section 18(2) of the Act. In view of the law laid down by the Full Bench of this Court, the order impugned cannot be held to be illegal on any count and, therefore, the challenge raised to the said order must fail.

4. CRA is rejected summarily.

(B.H.MARLAPALLE,J.)